

JS 44 (Rev. 12/07, NJ 5/08)

ER

CIVIL COVER SHEET

14

3886

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

TAMARA WEATHERLY

DEFENDANTS

EOS CCA

(b) County of Residence of First Listed Plaintiff Philadelphia

County of Residence of First Listed Defendant _____

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Craig Thor Kimmel, Esquire
Kimmel & Silverman, P.C.
30 E. Butler Pike
Ambler, PA 19002
(215) 540-8888

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

☐ 1 U.S. Government Plaintiff☒ 3 Federal Question (U.S. Government Not a Party)☐ 2 U.S. Government Defendant☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

Citizen of This State

PTF DEF
☐ 1 ☐ 1

Incorporated or Principal Place of Business In This State

PTF DEF
☐ 4 ☐ 4

Citizen of Another State

☐ 2 ☐ 2

Incorporated and Principal Place of Business In Another State

☐ 5 ☐ 5

Citizen or Subject of a Foreign Country

☐ 3 ☐ 3

Foreign Nation

☐ 6 ☐ 6

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input checked="" type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes

V. ORIGIN

(Place an "X" in One Box Only)

☒ 1 Original Proceeding☐ 2 Removed from State Court☐ 3 Remanded from Appellate Court☐ 4 Reinstated or Reopened☐ 5 Transferred from another district (specify)☐ 6 Multidistrict Litigation☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. § 1692

Brief description of cause:

Fair Debt Collection Practices Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S)

(See instructions):

JUDGE

DOCKET NUMBER

Explanation:

06/23/2014

DATE

SIGNATURE OF ATTORNEY OF RECORD

JUN 24 2014

ER

UNITED STATES DISTRICT COURT

14

3886

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 5308 Glenmore Avenue, Philadelphia, PA 19143

Address of Defendant: 700 Longwater Drive, Norwell, MA 02061

Place of Accident, Incident or Transaction: _____
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases
(Please specify) 15 U.S.C. § 1692

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify) _____

ARBITRATION CERTIFICATION

(Check Appropriate Category)

I, Craig Thor Kimmel, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 06/23/2014

Craig Thor Kimmel

Attorney-at-Law

57100

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 06/23/2014

Craig Thor Kimmel

Attorney-at-Law

57100

Attorney I.D.#

JUN 24 2014

ER

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

CASE MANAGEMENT TRACK DESIGNATION FORM

TAMARA WEATHERLY

v.

EOS CCA

:
:
:
:
:

CIVIL ACTION

14**3886**

NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ()
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ()
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. **(x)**
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ()
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ()
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ()

<u>06/23/2014</u>	<u>Craig Thor Kimmel</u>	<u>TAMARA WEATHERLY</u>
Date	Attorney-at-law	Attorney for
<u>215-540-8888</u>	<u>877-788-2864</u>	<u>kimmel@creditlaw.com</u>
Telephone	FAX Number	E-Mail Address

JUN 24 2014

ER

UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

1

TAMARA WEATHERLY,

Plaintiff

v.

EOS CCA,

Defendant

14 3886

Case No.:

COMPLAINT AND DEMAND FOR
JURY TRIAL

(Unlawful Debt Collection Practices)

FILED

JUN 24 2014

MICHAEL E. KUNZ, Clerk
By: KIM M. E. Clerk

COMPLAINT

TAMARA WEATHERLY ("Plaintiff"), by and through her attorney,
SILVERMAN, P.C., alleges the following against EOS CCA ("Defendant"):

INTRODUCTION

1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* ("FDCPA").

JURISDICTION AND VENUE

2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states that such actions may be brought and heard before "any appropriate United States district court without regard to the amount in controversy," and 28 U.S.C. § 1331 grants this court original jurisdiction of all civil actions arising under the laws of the United States.

3. Defendant conducts business in the Commonwealth of Pennsylvania and therefore, personal jurisdiction is established.

4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2).

S

PARTIES

5. Plaintiff is a natural person residing Philadelphia, Pennsylvania 19143.

6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

7. In the alternative, Plaintiff is a person granted a cause of action under the FDCPA. See 15 U.S.C. §1692k(a) and Wenrich v. Cole, 2000 U.S. Dist LEXIS 18687 (E.D. Pa. Dec. 22, 2000).

8. Defendant is a national debt collection company with its headquarters located at 700 Longwater Drive, Norwell, Massachusetts 02061.

9. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

11. At all relevant times, Defendant was attempting to collect an alleged consumer debt alleged to be owed to Verizon.

12. The alleged debt, a Verizon personal cellular telephone account, arose out of transactions, which were primarily for personal, family, or household purposes.

13. Plaintiff disputes owing the alleged debt.

14. This was an account which she transferred into her son’s name and Plaintiff received verbal confirmation from Verizon that she would be removed from the account, as it did not belong to her.

15. Beginning in August 2013, and continuing through September 2013, Defendant repeatedly contacted Plaintiff on her home telephone in its attempts to collect a debt.

1 16. For example, Defendant called her on September 9, 2013, at 11:30 a.m., and
2 September 10, 2013, at 8:00 a.m.

3 17. On at least one occasion, Plaintiff hung up on Defendant's collector and was
4 called back immediately.

5 18. When calling Plaintiff back immediately, Defendant intended to annoy, abuse
6 and harass Plaintiff, as it knew she did not want to be contacted, as she had just hung up the
7 telephone.

8 19. Defendant also contacted third parties seeking to collect this alleged debt.

9 20. In August 2013, Defendant contacted Plaintiff's brother, Stephen Weatherly.

10 21. In its communications with Plaintiff's brother, Defendant disclosed that it was
11 attempting to locate Plaintiff because she owed a debt.

12 22. At the time that it disclosed debt information to Plaintiff's brother, Defendant did
13 not have Plaintiff's express consent to disclose debt information to third parties, including her
14 brother.

15 23. Defendant's communication with Plaintiff's brother caused great embarrassment
16 for Plaintiff.

17 24. Finally, within five (5) days of its initial communication with Plaintiff, Defendant
18 failed to send Plaintiff written notice setting forth her rights to dispute the debt and/or seek
19 verification of the debt pursuant to the FDCPA.
20

21 25. To date, Plaintiff has not received anything in writing from Defendant.

22 26. Defendant actions as described herein were made with the intent to harass, abuse,
23 deceive and upset Plaintiff.
24
25

DEFENDANT VIOLATED THE FAIR DEBT COLLECTION PRACTICES ACT

27. In its actions to collect a disputed debt, Defendant violated the FDCPA in one or more of the following ways:

COUNT I

- a. A debt collector violates § 1692c(b) of the FDCPA by communicating, in connection with the collection of a debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector, without the prior consumer of the consumer given directly to the debt collector.
- b. Defendant violated § 1692c(b) of the FDCPA when it communicated, in connection with the collection of a debt, with a third party, Plaintiff's brother, without having Plaintiff's express permission to do so.

COUNT II

- a. A debt collector violates § 1692d of the FDCPA by engaging in conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt.
- b. Here, Defendant violated § 1692d of the FDCPA when it called Plaintiff on her home telephone with intent to annoy, abuse, and harass her in connection with a debt she does not owe.

COUNT III

- a. A debt collector violates § 1692e of the FDCPA by using any false, deceptive, or misleading representation or means in connection with the

1 collection of any debt.

2 b. A debt collector violates § 1692e(2)(A) of the FDCPA by making a false
3 representation as to the character, amount, or legal status of any debt.

4 c. Here, Defendant violated §§ 1692e and 1692e(2)(A) of the FDCPA by
5 falsely representing that Plaintiff owes a debt, when she did not owe a
6 debt.

7
8 **COUNT IV**

9 a. A debt collector violates § 1692f of the FDCPA by using unfair or
10 unconscionable means to collect or attempt to collect any debt.

11 b. A debt collector violates § 1692f(1) of the FDCPA by collecting an amount
12 (including any interest, fee, charge, or expense incidental to the principal
13 obligation) unless such amount is expressly authorized by the agreement
14 creating the debt or permitted by law.

15 c. Here, Defendant violated §§ 1692f and 1692f(1) of the FDCPA by
16 engaging in unfair and unconscionable actions in its attempts to collect a
17 debt, including calling Plaintiff back immediately after Plaintiff hung up
18 on Defendant's collector, continuing to call Plaintiff's home telephone in
19 an attempt to collect a debt that she did not owe, and attempting to collect
20 an amount not expressly authorized by the agreement creating the debt.

21
22 **COUNT V**

23 a. A debt collector violates § 1692g(a) of the FDCPA by failing to send to
24 the consumer, within five days after its initial communication with a
25 consumer in connection with the collection of a debt, a written notice

1 containing: (1) the amount of the debt; (2) the name of the creditor to
2 whom the debt is owed; (3) a statement that unless the consumer, within
3 thirty days after receipt of the notice, disputes the validity of the debt, or
4 any portion thereof, the debt will be assumed to be valid by the debt
5 collector; (4) a statement that if the consumer notifies the debt collector in
6 writing within the thirty-day period that the debt, or any portion thereof, is
7 disputed, the debt collector will obtain verification of the debt or a copy of
8 a judgment against the consumer and a copy of such verification or
9 judgment will be mailed to the consumer by the debt collector; and (5) a
10 statement that, upon the consumer's written request within the thirty-day
11 period, the debt collector will provide the consumer with the name and
12 address of the original creditor, if different from the current creditor.
13

- 14 b. Here, Defendant violated § 1692g of the FDCPA by failing to send written
15 notification, within five (5) days after its initial communication with
16 Plaintiff, advising Plaintiff of her rights to dispute the debt or request
17 verification of the debt or providing her with the name of the original
18 creditor and the amount of the debt.
19

20 WHEREFORE, Plaintiff, TAMARA WEATHERLY, respectfully prays for a judgment
21 as follows:

- 22 a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);
23 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to
24 15 U.S.C. § 1692k(a)(2)(A);
25 c. All reasonable attorneys' fees, witness fees, court costs and other litigation
costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and

1 d. Any other relief deemed appropriate by this Honorable Court.

2 **DEMAND FOR JURY TRIAL**

3 PLEASE TAKE NOTICE that Plaintiff, TAMARA WEATHERLY, demands a jury trial
4 in this case.

5
6
7 DATE: June 23, 2014

RESPECTFULLY SUBMITTED,

KIMMEL & SILVERMAN, P.C.

9 By: 

10 CRAIG THOR KIMMEL

Attorney ID # 57100

11 Kimmel & Silverman, P.C

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12 Ambler, PA 19002

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